No. 89-568

In The
Supreme Court of the United States
October Term, 1989

CHRYSLER CORPORATION, et al.,
Petitioners,

v.

STANLEY SMOLAREK and RALPH FLEMING,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF MANUFACTURERS AND MICHIGAN MANUFACTURERS ASSOCIATION AS AMICI CURIAE IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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INTEREST OF THE AMICI CURIAE

Michigan Manufacturers Association ("MMA") is a business association composed of private Michigan employers, organized and existing to study matters of general interest to its members, promote the interests of Michigan employers and of the public generally in the proper administration of laws relating to its members, and otherwise promote the general business and economic welfare of the State of Michigan. A significant aspect of MMA's activities is representing the interests of its member-employers in employment and labor relations matters before the courts, Congress, Michi-

gan Legislature, and State agencies. Michigan Manufacturers Association appears before this Court as a representative of approximately twenty-seven hundred private employers who employ one million employees covered under the Handicappers' Civil Rights Act, MCLA 37.1101 *et seq.*; MSA 3.550(101) *et seq.*, many of whom are covered by collective bargaining agreements subject to §301 of the Labor Management Relations Act, 29 U.S.C. §185, and are affected by the issues presently before this Court. MMA is also an employer of workers in the state of Michigan and has an interest in this case both as an employer and as a representative of employers who will be affected by the issues decided herein.

National Association of Manufacturers ("NAM") is an association of approximately 13,500 companies and subsidiaries that together produce more than eighty percent of this nation's manufactured goods and employ eighty-five percent of all manufacturing workers in the United States, many of whom are potentially affected by the issues addressed herein. NAM is affiliated with 158,000 additional businesses through its association's council and the National Industrial Council. MMA and NAM represent the interests of their member-employers through various means including through appearances as *amicus curiae* in cases of major concern.

The paramount issue of federal preemption under Section 301 of the Labor Management Relations Act and the remedy it mandates are of particular concern to MMA, NAM and their members. This Court's consideration of the issue raised in these cases will have a material impact on the business and economic climate in the state of Michigan and other states which have enacted comparable handicapper legislation. The Sixth Circuit Court of Appeals' decision would allow state courts to scrutinize the propriety of specific decisions made by employers pursuant to collectively bargained agreements regarding an employee's medical restrictions and ability to work and safely perform a job. Employers will find themselves subject to judicial litigation resulting in substan-

tial monetary damages for employment actions which the parties have agreed to remedy only by resort to internal grievance and arbitration procedures. If employers are discouraged from providing for disability leaves and medical restriction accommodations in collectively bargained agreements because they are subject to inconsistent judicial and arbitral interpretations, the large majority of employees who benefit from such provisions will also suffer.

Because the Court of Appeals' decision frustrates federal labor policy and contradicts governing precedent from this Court, Michigan Manufacturers Association and National Association of Manufacturers submit this brief *amicus curiae*, with the consent of all parties, in support of the petition for a writ of certiorari in order to assist the Court in evaluating the importance of the issues presented.

PRELIMINARY STATEMENT

The question in these two cases is whether Section 301 of the Labor Management Relations Act, 29 U.S.C. §185 ("LMRA") preempts respondents' claims of violation of Michigan's Handicappers' Civil Rights Act, MCL 37.1101 *et seq.*, MSA §3.550(101) *et seq.* ("MHCRA"). The essence of Smolarek's and Fleming's respective claims is that Chrysler's failure to reinstate Smolarek following a disability leave, and to grant Fleming preferential work assignments to accommodate his medical restrictions, constituted "handicap discrimination." Both respondents claim that they have been denied, and now seek to enforce, rights that originate in the Chrysler/UAW collective bargaining agreement. Absent a contractual right to reinstatement, Smolarek would have no claim. Similarly, the duty to accommodate Fleming's job-related medical restrictions arises — if at all — only under the collective bargaining agreement. Respondents' claims cannot be resolved without looking to the collective bargaining agreement to ascertain their entitlement to the accommodations they seek.

In an essentially evenly divided *en banc* decision, the Sixth Circuit Court of Appeals majority determined that respondents' claims were not preempted by Section 301. The seven dissenting judges believed respondents' MHCRA claims were preempted since they arose only from the collective bargaining agreement. Petitioners argue that upon application of the standard articulated by this Court in *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) and *Lingle v. Norge Division of Magic Chef*, 486 U.S. 399 (1988), respondents' claims are "inextricably intertwined with" and "require interpretation of" a collective bargaining agreement.

REASONS FOR GRANTING THE PETITION

I.

THIS COURT SHOULD RESOLVE CONFUSION IN SECTION 301 PREEMPTION ANALYSIS BY CLARIFYING THAT ENFORCEMENT OF RIGHTS DERIVED SOLELY FROM COLLECTIVE BARGAINING AGREEMENTS REQUIRES INTERPRETATION OF SUCH AGREEMENTS.

Where the resolution of state law claims would interfere with or frustrate federal labor law policy favoring private resolution of labor disputes, such claims must yield to federal preemption. The goal of federal labor policy, as articulated in the federal statutory scheme and reflected in prior decisions of this Court, is to promote stability and industrial peace in the workplace. The rationale underlying a uniform federal labor policy was set forth by this Court almost thirty years ago:

> The possibility that individual contract terms might have different meanings under state and federal law would inevitably exert a disruptive influence upon both the negotiation and administration of collective agreements. Because neither party could be certain of the rights which it had obtained or conceded, the process of nego-

> tiating an agreement would be made immeasurably more difficult . . . Once the collective bargain was made, the possibility of conflicting substantive interpretation under competing legal systems would tend to stimulate and prolong disputes as to its interpretation. Indeed, the existence of possibly conflicting legal concepts might substantially impede the parties' willingness to agree to contract terms providing for final arbitral or judicial resolution of disputes.

Teamsters Union v. Lucas Flour Co., 369 U.S. 95 at 103 (1962). Therefore, when an employee seeks to redress violations of rights that arise out of a collective bargaining agreement, resolution of those claims falls within the exclusive scope of Section 301 of the LMRA. *Id.*

In *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202 (1985) this Court extended the preemptive reach of Section 301 "beyond suits alleging contract violation" to encompass state tort claims when resolution of those claims involves "questions relating to what the parties to a labor agreement agreed, and what legal consequences were intended to flow from breaches of that agreement." 471 U.S. at 211. The Court observed in *Lueck* that state-law rights and obligations that do not exist independently of private agreements are preempted by those agreements. Emphasizing that the right asserted by the plaintiff in *Lueck* (timely payment of disability insurance benefits) derived from the contract, the Court explained:

> [U]nless federal law governs that claim, the meaning of the health and disability benefit provisions of the labor agreement will be subject to varying interpretations, and the congressional goal of a unified federal body of labor-contract law would be subverted. 471 U.S. at 220.

The Court held that the employee's state-law tort claim was preempted by Section 301 because "any attempt to assess liability here inevitably will involve contract interpretation." 471 U.S. at 218. The Court then articulated a standard imposing preemption by Section 301 "when resolution of a state-

law claim is substantially dependent upon analysis of the terms of an agreement made between the parties in a labor contract." *Id.*

Last year this Court further clarified the contours of Section 301 preemption in *Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 108 S.Ct. 1877 (1988). The Court first recounted the basis of its previous finding of preemption in *Lueck* — that the collective bargaining agreement was the source of the right that the employee sought to enforce:

> We began by examining the collective bargaining agreement and determined that it provided the basis not only for the benefits, but also for the *right* to have payments made in a timely manner, *Id.* at 213–216, 105 S.Ct. at 1912–1914. We then analyzed the Wisconsin tort remedy, explaining that it "exists for a breach of a 'duty devolv[ed] upon the insurer by reasonable implication from the express terms of the contract,' the scope of which, *crucially, is 'ascertained from a consideration of the contract itself.'* " *(Emphasis added) Lingle*, 108 S.Ct. at 1881.

Lingle essentially reiterated the standard imposed by *Lueck*: that "judges can determine questions of state law involving labor management relations only if such questions do not require construing collective bargaining agreements." 108 S. Ct. at 1884. In *Lingle* itself, however, the plaintiff's claim of retaliatory discharge for filing a workers compensation claim was not preempted by Section 301, because the essential elements that the plaintiff needed to show (that she was discharged and that her employer discharged her because she filed a workers compensation claim) did not necessitate the interpretation of any term of a collective bargaining agreement. Significantly, a court was not required in the *Lingle* scenario to examine the collective bargaining agreement to see whether the employee had the right to file a workers compensation claim. Unlike Lueck's right to receive timely insurance payments, the right to file a workers compensa-

tion claim derives solely from state statutes. Thus, the state law remedy the plaintiff sought in *Lingle* was "independent" of the collective bargaining agreement for Section 301 pre-emption purposes. 108 S. Ct. at 1882.

The initial inquiry in each of the present cases must be the same as the initial inquiry in *Lueck:* whether the right that the employee is seeking to exercise or enforce would exist in the absence of the collective bargaining agreement. If the respondents' state law claims are rooted in "independent" rights and can be identified without examining the collective bargaining agreement, then they will not be preempted. However, if the rights that are at the core of respondents' claims are derived from, and therefore dependent upon, the collective bargaining agreement, then they must be preempted. In accordance with *Lueck*, this inquiry must be the starting point in Section 301 preemption analysis. It should not be bypassed even where a plaintiff alleges that his employer's motivation was discriminatory.

As this Court acknowleged in *Lueck* four years ago, the scope of "the pre-emptive effect of federal labor-contract law remains to be fleshed out on a case-by-case basis." 471 U.S. at 220. However, ever since the Court cautioned in *Lueck* that not every state law claim that "relates in some way" to a collectively bargained provision is necessarily pre-empted, the lower courts and counsel have received limited guidance in applying this doctrine. The present controversy presents a particularly appropriate opportunity for this Court to address at least one aspect of the practical application of the "interpretation" requirement. This Court should review these cases to emphasize that when a court must examine a collective bargaining agreement in order to ascertain the employee's entitlement to the benefit or treatment he seeks, such examination constitutes "interpretation" as contemplated by *Lueck* and *Lingle*.

II.

THE SIXTH CIRCUIT IGNORED THE SIGNIFICANT DISTINCTION BETWEEN CASES IN WHICH A COLLECTIVE BARGAINING AGREEMENT IS THE SOURCE OF THE RIGHT THE EMPLOYEE SEEKS TO ENFORCE AND THOSE IN WHICH IT IS A DEFENSE TO AN EMPLOYEE'S ACTION.

Michigan's Handicappers' Civil Rights Act provides that an employer may not "[d]ischarge or otherwise discriminate against an individual with respect to . . . the terms, conditions, or privileges of employment, because of a handicap that is unrelated to the individual's ability to perform the duties of a particular job or position." MCL 37.1202(1)(b); MSA § 3.550(202)(1)(b). MHCRA does not require an employer to accommodate a physical condition which is related to an employee's ability to perform his job. *Carr v. General Motors*, 425 Mich. 313; 389 N.W.2d 686 (1986). As construed in *Carr* and its progeny, MHCRA imposes no obligation on employers to provide disability leave for an employee who becomes temporarily disabled, or to reinstate an employee to a job consistent with his medical restrictions.[1]

Respondents contend that their claims under MHCRA allege "non-negotiable" state law rights that are "independent" of

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[1] Since *Lingle* was decided last year, the Michigan Court of Appeals has consistently held that where plaintiffs' claims under MHCRA seek to enforce reinstatement and seniority rights that derive from a collective bargaining agreement, such claims require interpretation of that agreement and are preempted by Section 301. *Cuffe v. General Motors Corp.*, 166 Mich.App. 766, 420 N.W.2d 874 (1988); *Metro v. Ford Motor Company*, 169 Mich. App. 549, 426 N.W.2d 700 (1988); *Desjardins v. The Budd Company*, 175 Mich.App. 599, 438 N.W.2d 622 (1988). The Michigan Supreme Court vacated the Court of Appeals' decisions in *Metro* and *Cuffe* and remanded them for reconsideration in light of *Lingle*. The Court of Appeals has since reaffirmed its decisions in both *Metro*, ___ N.W.2d ___ (Mich. App., August 25, 1989) and *Cuffe*, ___ NW2d ___ (Mich. App., October 2, 1989).

the terms of the collective bargaining agreement. In upholding the viability of respondents' claims, the Court of Appeals disregarded the contractual rights upon which respondents must rely to seek accommodation for medical conditions related to their abilities to perform particular jobs. The duty claimed to have been breached in these cases is not simply the duty not to discriminate, but the duty to reinstate and accommodate respondents in their original or different jobs. That duty arises from the collective bargaining agreement, not from MHCRA.[2]

The Sixth Circuit majority acknowledged that the UAW/Chrysler collective bargaining agreement contains provisions for reinstatement following disability and reassignment to accommodate medical restrictions. It suggested, in fact, that Chrysler may ultimately defend its position on the basis of contractual limitations, as for example where the majority stated: "Chrysler may, in its own defense, assert that its treatment of Smolarek was allowed or required by the terms of the collective bargaining agreement and therefore was not based on Smolarek's handicap." Slip Opinion at 13. The significance of the collective bargaining agreement in these cases, however, is not simply that it provides a rationale or a defense for Chrysler's actions, but that it is the sole source of the accommodations that Fleming and Smolarek seek.

This distinction is readily apparent when the claims in these cases are compared with the plaintiff's claims in a recent Sixth Circuit Court of Appeals decision, *O'Shea v. The Detroit News*, ___ F.2d ___, 1989 WL 118791 (October 11, 1989), which purports to rely on the majority's analysis in *Smolarek*. The plaintiff in *O'Shea* claimed that the acts of her

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[2] Although it may be that MHCRA bestows certain non-negotiable rights upon both unionized and non-unionized workers, the existence of such non-negotiable rights does not ensure non-preemption. Even where a law applies to all state workers, in those instances where interpretation of a collective bargaining agreement is required, the application of the law in those instances is preempted. *Lingle*, 108 S.Ct. at 1882, n.7.

late husband's employer in transferring him to the newspaper's midnight shift constituted not only a demotion, but age and handicap discrimination. The employer argued that it transferred Mr. O'Shea pursuant to provisions in its collective bargaining agreement and that interpretation of that agreement was required to determine whether it had, in fact, demoted Mr.O'Shea. The Court of Appeals, invoking the example of *Lingle*, explained:

> The defendant can argue in defense that he had good cause under the contract, but this defense does not affect the fact that the *plaintiff's claim is not based on the contract*. The claim thus does not depend on any interpretation of the agreement; the relevant rights are completely outside the agreement. (Emphasis added) Slip opinion at 6.

Referring to its decision on Smolarek's and Fleming's claims, the Court of Appeals recalled: "We held [there] that the question whether or not the plaintiff was discriminated against was separate from any possible defense the employer might have under the contract." *O'Shea* at 7. The Court of Appeals' characterization of its own prior decision reflects the confusion that has developed in this area. The Court of Appeals' application of Section 301 preemption in these cases ignores basic differences between those situations where the employee's claim is based on the contract and where the employer's defense is based on the contract. Certiorari should be granted to address this fundamental distinction and resolve the inconsistencies faced by employees and employers as a result of this confusion.

III.

PERMITTING EMPLOYEES TO SIDESTEP NEGOTIATED GRIEVANCE PROCEDURES FRUSTRATES THE GRIEVANCE/ARBITRATION PROCESS, AND FORCES EMPLOYERS TO ACCOMMODATE EMPLOYEES WHOM THEY DID NOT AGREE TO ACCOMMODATE.

MHCRA expressly recognizes that a person's physical condition is a relevant consideration in employment decisions, so long as it is job related. *Carr, supra.* In this regard, MHCRA fundamentally differs from civil rights statutes that prohibit consideration of such characteristics as race, sex, age or national origin.[3] It is not unlawful *per se* to consider physical disabilities and medical restrictions in making employment decisions. Physical conditions, unlike sex, age or race, can and must be considered in making employment decisions, so long as the physical conditions are job related.[4] Thus, under MHCRA, it is not only appropriate, but generally accepted for employers and unions to negotiate provisions for medical restrictions, disability and reinstatement. The Chrysler/UAW collective bargaining agreement contains detailed negotiated provisions for determining disabilities and medical restrictions (generally by independent medical examinations), procedures

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[3] The Sixth Circuit majority relies on this Court's suggestion in *Lingle*, as implemented by the Ninth Circuit in *Ackerman v. Western Electric Co.*, 860 F.2d 1514 (9th Cir. 1988), that "the mere fact that a broad contractual protection against discriminatory . . . discharge may provide a remedy for conduct that coincidentally violates state law does not make the existence or the contours of the state law violation dependent upon the terms of the private contract." However, the contractual provisions at issue in these cases are not "broad contractual provisions" which simply prohibit discrimination in employment decisions. To resolve the asserted claims, a court must first construe the UAW/Chrysler contract provisions that enable employees to take a disability leave and to resume employment depending upon seniority, availability and physical restrictions.

[4] See, for example, *McCall v. Chesapeake & Ohio Railway Company*, 844 F.2d 294 (6th Cir. 1988), cert. denied, 109 S.Ct. 196 (1988).

for reinstatement following a disability and assignment to jobs that can be performed under certain medical restrictions. Decisions made pursuant to these negotiated provisions are subject to contractual grievance/arbitration procedures. Certainly it was intended by the contracting parties that disputes relative to such decisions would be resolved through those procedures.

It is well established that state law claims cannot serve as an independent source of private rights to enforce collective bargaining agreements which themselves provide for remedies through grievance procedures. *Hines v. Anchor Motor Freight*, 424 U.S. 554 (1976). Nonetheless, respondents' claims seek to circumvent collectively bargained procedures for making decisions regarding job-related physical conditions, decisions that do not conflict with MHCRA.

If a state law action were permitted each time an individual employee objected to the result of the contractual grievance mechanism — or failed to invoke the contractual mechanism — such state actions would circumvent the very procedures agreed to by the union and the employer and would invariably undermine the collective bargaining process in areas that are appropriate subjects of bargaining even under MHCRA.

This Court in *Lueck* emphasized the danger inherent in such a result when it stated:

> A rule that permitted an individual to sidestep available grievance procedures would cause arbitration to lose most of its effectiveness. *Republic Steel Corp. v. Maddox*, 379 U.S. 650, 653, 13 L.Ed.2d 580, 85 S.Ct. 614, 616 (1965), as well as eviscerate a central tenet of federal labor-contract law under § 301 that it is the arbitrator, not the court, who has the responsibility to interpret the labor contract in the first instance. 471 U.S. at 220.

IV.

CONCLUSION

For these reasons, and upon the entire record, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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